

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: MICHAEL S. MOODY,

Debtor.

BKY. No.: 04-31191
Chapter 13

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: MICHAEL S. MOODY AND HIS ATTORNEY, IAN TRAQUAIR
BALL, ATTORNEY AT LAW, 12 S. 6TH ST., STE. 326,
MINNEAPOLIS, MN 55402.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004 at 10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on March 1, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which are attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Pre-confirmation Modified Chapter 13 Plan confirmed on May 28, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtor is in default on said payments from June 1, 2004 to date in the amount of \$805.32 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order

pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1725)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 30, 2004.

WELLS FARGO BANK, N.A.

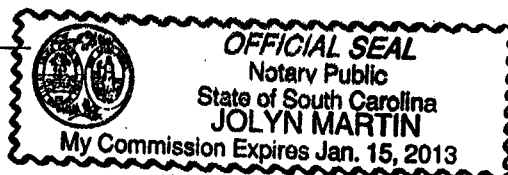
By: Karan Abernethy
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

30 day of August, 2004

J. Martin
Notary Public



No. 38995
 Registration Tax hereon of \$ 230.00
 Paid the 18th day of November 2002.
 MYRNA SCHOEB (County Treasurer) signed by [Signature]
 Countersigned and payment recorded
 ROBERT BRUNS (County Auditor) signed by [Signature]

OFFICE OF REGISTRAR OF TITLES Doc. No. 34623
 NICOLLET COUNTY, MINNESOTA



Cert # 7783 Vol. 25 Page 257

Certified Filed on 11-18-2002 at 08:00 A.M.



KATHRYN CONLON, Registrar of Titles
 Nicollet County, Minnesota KE

RECD: AT TITLE

Fee: \$ 20.00

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
 WELLS FARGO HOME MORTGAGE, INC.
 3601 MINNESOTA DR. SUITE 200
 BLOOMINGTON, MN 55435

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated NOVEMBER 13, 2002 together with all Riders to this document.

0015916349

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP -6(MN) (0006)

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Initials msm

VMP MORTGAGE FORMS - (800)821-7291

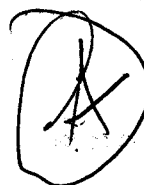


34623

(B) "Borrower" is MICHAEL S. MOODY, A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.
 (C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION
 organized and existing under the laws of THE STATE OF CALIFORNIA
 Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304



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(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction]

of NICOLLET

[Name of Recording Jurisdiction]:

LOT FIFTEEN (15), BLOCK TWO (2), GREEN ACRES NO. 3, CITY OF NORTH

MANKATO, NICOLLET COUNTY, MINNESOTA, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER WITHIN AND FOR NICOLLET COUNTY, MINNESOTA.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 10304, DES MOINES, IA 503060304

Parcel ID Number: 18-540-0390
1785 LAMAR DRIVE
NORTH MANKATO

which currently has the address of
[Street]
[City], Minnesota 56003 [Zip Code]

34623

STATE OF MINNESOTA,

BLUE EARTH

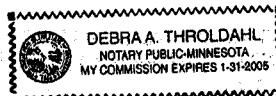
County ss:

On this 13th day of November 2002, before me appeared
MICHAEL S. MOODY, A SINGLE PERSON

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

Notary Public

My Commission Expires: 01.31.2005



This instrument was drafted by:
WELLS FARGO HOME MORTGAGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: MICHAEL S. MOODY,

Debtor.

BKY. No.: 04-31191
Chapter 13

**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SUPERVISOR**

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That pursuant to the Pre-confirmation Modified Chapter 13 Plan confirmed on May 28, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from June 1, 2004 to date in the amount of \$805.32 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

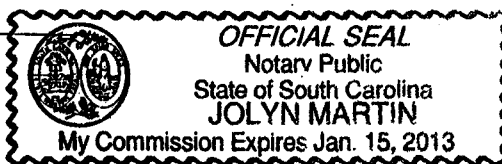
Dated: August 30, 2004

By: Karan Abernethy
Karan Abernethy
Bankruptcy Supervisor
3476 Stateview Blvd.
Fort Mill, SC 29715

Subscribed to and sworn before me this

30 day of August, 20 04

Notary J. Martin



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: MICHAEL S. MOODY,

Debtor.

BKY. No.: 04-31191
Chapter 13

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtor filed his petition herein on March 1, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Nicollet County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot Fifteen (15), Block Two (2), Green Acres No. 3, City of North Mankato,
REGISTERED PROPERTY.

The amount due under said mortgage loan was approximately \$103,000.00. Pursuant to the Pre-confirmation Modified Chapter 13 Plan confirmed on May 28, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from June 1, 2004 to date in the amount of \$805.32 per month, plus post-petition late charges.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet his contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrtcy. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrtcy. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrtcy. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward his loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(D1725)

UNITED STATES BANKRUPTCY COURT
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Chapter 13

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 31, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Michael J. Farrell
Trustee
P.O. Box 519
Barnesville, MN 56514

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Michael S. Moody
1785 Lamar Dr.
N. Mankato, MN 56003

Ian Traquair Ball
Attorney at Law
12 S. 6th St., Ste. 326
Minneapolis, MN 55402

Household Financial Services, Inc.
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Ramsey Law Firm, PC
Attn: Capital One Auto Finance
Account: 154675
P.O. Box 201347
Arlington, TX 76006

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 31, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1725)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: MICHAEL S. MOODY,

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ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 20, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot Fifteen (15), Block Two (2), Green Acres No. 3, City of North Mankato,
Nicollet County, Minnesota,
REGISTERED PROPERTY.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of U.S. Bankruptcy Court